IN THE SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1900.

No._____

JOHN E. CODLIN, Chairman of the Board of County Commissioners of Colfax County, New Mexico, and
MANUEL M. SALAZAR, Clerk of the Board of County Commissioners of Colfax County, New Mexico,
Plaintiffs in Error.
vs.
CHARLES B. KOHLHOUSEN,
CHRISTOPHER N. BLACKWELL,
ALFRED C. PRICE, and
TIMOTHY F. McAULIFFE.
Defendants in Error.

Statement, Brief and Argument of Plaintiffs in Error.

STATEMENT.

A petition for a writ of mandamus was filed by the defendants in error, in the district court, fourth judicial district, Territory of New Mexico, in and for the County of Colfax, by which it was sought to compel the plaintiffs in error to sign, execute and deliver, in their official capacity, as chairman and clerk, respectively, of the board of county commissioners of Colfax county, New Mexico, certain bonds of that county, issued by the board of county com-

missioners under and pursuant to certain acts of the legislative assembly of the Territory of New Mexico.

There was an order upon the plaintiffs in error to show cause why the writ should not issue as prayed for. The plaintiffs in error answered denying the constitutionality of these legislative enactments. The district court, upon the petition and answer, after hearing and argument, overruled the answer. The peremptory writ of mandamus issued and was obeyed by the plaintiffs in error.

The case was heard in the supreme court of New Mexico on writ of error sued out by the plaintiffs in error. In that court the order of the district court overruling the answer and issuing the writ of mandamus was affirmed.

STATUTES.

The following acts of the Thirty-second Legislative Assembly of the Territory of New Mexico are claimed to be unconstitutional, in that they are special and in contravention of the act of congress, approved July 30, 1886, entitled "An Act to prohibit the passage of local or special laws in the territories of the United States, to limit territorial indebtedness and for other purposes," and known as the "Springer act."

"An act in relation to removal of county seats, approved February 5, 1897.

"Be it enacted by the Legislative Assembly of the Territory of New Mexico:

"Section 1. Whenever the citizens of any county in this territory shall present a petition to the board of county commissioners, signed by qualified electors of said county, equal in number to at least one-half the legal votes cast at the last preceding general election, asking for the removal of the county seat of said county to some other designated place, which petition shall be duly recorded in the records of said county, said board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county, at the next general election, if the same is to occur within one year from the time of presenting said petition, otherwise at a special election

to be called for that purpose within six weeks from the date of presenting said petition: *Provided,* That before making such order the said commissioners shall require a written guaranty from responsible citizens of the place to which the petitioners desire the county seat removed, that they will provide free of cost to the county, a suitable site and sufficient ground for a court house and jail, and that they will pay to the county treasurer a sum not less than eight thousand dollars, to be used in constructing such court house and jail, in the event that the proposition for removal shall receive a majority of the votes cast at such election; and *Provided, further,* That the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the then county seat of said county; and that no proposition to remove a county seat from a city, town or village, situated on a railroad to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition oftener than once in ten years.

"SEC. 2. The county commissioners shall cause a certified copy of such order to be published in some newspaper of general circulation published in said county for four consecutive weeks immediately prior to such election, and by hand bills posted up at three of the most public places in each precinct at least four weeks prior to such election.

"The ballots to be voted at such election shall have printed thereon the words: 'For County Seat———,' with the name of the place for which the voter desires to cast his ballot either printed or written thereon. Such ballots shall be canvassed as in elections for county officers and the returns of such election shall be certified by the probate clerk to the territorial secretary together with a certified copy of the order of the county commissioners and a sworn certificate of the publication thereof, to be filed in the office of said secretary.

"SEC. 3. Should a majority of the votes at such election be cast in favor of the place named in the petition, the county seat shall be removed to such place and it shall be the duty of the county commissioners, so soon as the citizens of such place shall have delivered the deed and paid over the sum of money mentioned in the written guaranty provided for in section 1 of this act, to cause to be erected upon the site so provided a court house and jail to cost not to exceed

three times the amount so paid by such citizens, including said amount.

"For the purpose of such construction said county commissioners are hereby authorized to issue coupon bonds of said county for such time and bearing such rate of interest, not to exceed six per cent. per annum, as they may deem best, such bonds to be sold at par, or taken at par in payment for such construction. The contract for the construction of such buildings shall be let to the lowest responsible bidder after advertising the time and place of opening sealed bids for the same in a newspaper published in said county, for four consecutive weeks, such contractor to furnish a good and sufficient bond for the completion of such buildings according to the plans and specifications.

"SEC. 4. So soon as convenient buildings can be had at such new county seat the courts for said county shall be held therein and so soon as the new court house and jail shall have been completed, the county commissioners shall cause all the county records, county officers, and property pertaining thereto, and all county prisoners, to be removed to the new county seat. Any county commissioner or other county officer who shall neglect or refuse to carry out any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $500 nor more than $1,000, which fine may be collected by a suit on his official bond and shall be paid over to the county treasurer for the general county fund. It shall be the duty of the governor of the territory to immediately remove from office any officer who shall neglect or refuse to carry out any of the provisions of this act and to appoint his successor.

"SEC. 5. When a new county seat shall have been established in accordance with this act the county commissioners shall cause the notice thereof to be published in some newspaper of general circulation published in said county for four consecutive weeks, and all suits, actions, process, prosecutions and proceedings already commenced or that may be commenced shall proceed to final judgment and execution at such new county seat.

"SEC. 6. All laws or parts of laws in conflict with any of the provisions of this act are hereby repealed, and this act shall take effect and be in force from and after its passage."

"An act relating to municipal corporations and for other purposes, approved March 10, 1897.

"*Be it enacted by the Legislative Assembly of the Territory of New Mexico:*

"SECTION 1. Hereafter, when the county seat of any county in this territory shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a court house and jail, as well as for city purposes, such council may issue bonds of such city for the purpose of such construction and the purchase of suitable grounds for such buildings, not to exceed in amount 3 per cent. upon the total value of all taxable property within the limits of such city, as shown by the last preceding general assessment for the purpose of taxation: *Provided*, The total indebtedness of such city, including such bonds, shall not exceed four per centum of the total value of all taxable property within the limits of such city, according to such last preceding general assessment.

"Such bonds may be payable in such time and manner and with such rate of interest not to exceed 6 per cent. per annum as such council shall prescribe; and it shall be the duty of such council, or the county commissioners of said county, as the case may be, to cause to be levied and collected in the manner and at the time of the levying and collecting other taxes each year and until such bonds and interest thereon shall be fully paid, a special tax upon all taxable property in the said city sufficient in amount to meet the interest and create a sinking fund to pay said bonds at maturity in accordance with the provisions thereof.

"SEC. 2. The county commissioners of such county are hereby authorized to join with the council of such city in the construction of such buildings: *Provided*, The par value of the bonds so issued and contributed by such city shall equal the cost of the grounds for such building. The amount of the cash contribution now provided by law to be made by the city to which the county seat shall be removed, and a sufficient sum in addition thereto to cover the costs of the additional space to be used for city purposes, and upon completion of said building, to give such city a lease for the perpetual use of such portion of said building as it may be entitled to; also to arrange for the keeping of city prisoners in said jail.

"SEC. 3. Such bonds shall be sold at par or taken

at par in payment for grounds or building, and such bonds shall be delivered to the county commissioner, or to such person as they may designate to have charge of the construction and payment for such building. The contract for such construction shall be let by the county commissioners, and said grounds and building shall belong to the county, and the county shall have the right to charge and collect from such city its proper share of the cost of maintenance, repair and insurance thereof.

"SEC. 4. Such county commissioners shall receive and accept bonds of such city, issued according to this act, together with an agreement duly executed by the owners of suitable grounds for said public building, to execute a good and sufficient deed, conveying the same to said county in exchange for a certain amount of said bonds in lieu of the cash contribution and guaranty now provided by law in case of removal of county seats.

"SEC. 5. In case of a removal of the county seat as now provided by law and the issue of bonds by any county for the purpose of constructing county buildings, it shall be the duty of the county commissioners of such county to cause to be levied and collected at the time and in the manner of levying and collecting other taxes, each year until said bonds and the interest thereon are fully paid, a special tax upon all taxable property within said county sufficient to pay the interest on such bonds and to create a sinking fund to retire said bonds at maturity, in accordance with the provisions thereof.

"This act to be in full force and effect from and after its passage and approval."

The act of congress of which it is claimed that the two above mentioned acts are in contravention, is in part as follows, to-wit:

"An act to prohibit the passage of local or special laws in the territories of the United States, to limit territorial indebtedness, and for other purposes."

"*Be it enacted, etc.*, That the legislatures of the territories of the United States, now or hereafter to be organized, shall not pass local or special laws in any of the following enumerated cases, that is to say:

* * * * * *

ASSIGNMENTS OF ERROR.

I.

The Supreme Court of New Mexico erred in affirming the judgment and order of the District Court of the fourth judicial district of New Mexico in and for the county of Colfax, New Mexico, overruling the answer of the plaintiffs in error and in ordering a peremptory writ of mandamus in said cause, as prayed for by the defendants in error.

II.

The Supreme Court of New Mexico committed divers other errors apparent upon the face of the record.

"Locating or changing county seats.
"Regulating county and township affairs.
* * * * * *

"In all other cases where a general law can be made applicable, no special law shall be enacted in any of the territories of the United States by the territorial legislatures thereof."
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BRIEF AND ARGUMENT.

Chapter 6 of the Acts of the Thirty-second Legislative Assembly of New Mexico is invalid and unconstitutional. It is special legislation and contrary to the provisions of the Act of Congress, approved July 30, 1886.

Legislative enactments are special when they do not in their subject, operation or immediate necessary results, affect the people or their property in general.

The New Mexico statute in relation to the removal of county seats is repugnant to the provisions of the act of congress, approved July 30, 1886, c., 818, 24 *Stat.* 170, in that the act is not general in its application: the conditions and limitations in the act contained are not germane to the subject matter of the statute.

Acts which classify cities in a state according to population and provide special laws for each class are not obnoxious to constitutional provisions prohibiting special legislation, but where, in view of the facts, the practical result of the act is to confer power upon one or upon some very limited number of municipalities, the court will take judicial notice of such facts and hold the act invalid as a piece of special legislation.

There is authority for classification of cities by population for certain purposes. The New Mexico statute is a classification in arbitrary terms, and not relating to the objects and purposes of the statute. The facts upon which the classification is made to depend are arbitrary, not ger-

mane and not essential to the objects of the law and can not be sustained by the court.

If such a classification can be sanctioned, then the act of congress is of small avail as there are few objects that can not be arbitrarily associated, if all that is requisite for the purpose of legislation is to designate them by some quality, some geographical characteristic, no matter what it may be, which will so distinguish them as to mark them as a distinct class.

Why not have said: "All counties having a population of 20,000 and containing not less than 100 miles of operated railroad or 100,000 head of cattle?" Why not have said: 'All counties having not less than 100 miles of operated railroad and watered by the Rio Grande?" If the statute in question is worthy of the title of a general law, the one equally as deserving would be that which would classify counties by the amount of capital invested in irrigation enterprises, the number of miles of operated railway or irrigating canals, or the number of incorporated cities in a county.

A law may be general in its wording and may apply to the whole of a group of objects having characteristics sufficiently marked and important to make them a class by themselves, and yet such a law may be in contravention of the congressional inhibition against special legislation in the territories.

In State vs. Hammer, 42 *N. J. Law, p.* 435, the court says:

> "But the true principle requires something more than a mere classification by such characteristics as will serve to classify, for the characteristics must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having reference to the subject matter of the proposed legislation, between the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things as will, in some reasonable degree, at least, account for or justify the restric-

tion of the legislation. Principles of this sort can be best elucidated by examples. I have already given a sample of a merely arbitrary classification, founded on no casual relation between the subject matter of such legislation and the things so classified. A sample of the other, or legitimate kind, would be signified in a law that should give to all cities in the state situated on tide-water the privilege of using such water in connection with their sewers. In such an enactment, but a part of the cities of the state would be embraced, but the classification would be lawful and proper, inasmuch as the places embraced would be possessed of a characteristic distinct from those possessed by the excluded places, such characteristic being of such a nature as to afford a reasonable ground for such special legislation. In the two classes of instances thus exemplified, the basis of the classification of the one would be by a reference to marks of distinction having no connection with the substance of the supposed statute; in the former, the opposite of this would obtain, so that in the former, the classification would be formal and arbitrary; in the latter, substantial and springing out of the nature of the subject of the legislation. The present law is seemingly of the former kind. The class to which it is made applicable is designated and selected by the mark of each of its members, being possessed of a certain kind of board of officers, a circumstance having no connection but a formal one with the subject matter of the law, and in no way indicating a reasonable ground for making these particular places the object of such special legislation. In all but mere form, as I have said, these places might as well have been designated by name as by reference to these organic bodies possessed by them, and the effect of this law would have been precisely the same."

In the New Mexico statute, is there anything substantial and springing out of the nature of the subject of the removal of county seats in a proviso which limits a classification to cases of removal only where responsible citizens shall give a written guaranty for suitable grounds and shall pay eight thousand dollars into the county treasury, or that the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the then county seat?

In this statute restriction is imposed upon restriction, until the generality of the law is hidden and impossible.

A proviso that the sum of eight thousand dollars shall first be paid into the county treasury is arbitrary, speculative and is a condition that the law by any terms can not control. It is an event wholly within the control of individuals whose interest is more apt to be speculative than for the real and best interests of the entire people of a county. It is an invitation to the passing of fraudulent legislation for individuals bent on the promotion of private interests at the expense of the public. The courts should insist upon a full compliance with the letter and spirit of the act of congress and should not hesitate to condemn all efforts to secure local legislation under the guise of general laws. No new rule of law is contended for. All that is asked is that the legislative agents of the people shall be subject to the same rules which are laid down for the government of individuals in respect to statutory law and that is "when anything is forbidden to be done, whatever tends or leads to it, as the means of compassing it, it forbidden at the same time."

Every public interest might be best conserved, in a given case, for the removal of a county seat from a place where the population is only one inhabitant greater than that of the place where the county seat ought in justice to all the people be located, and still under the designing proviso of the New Mexico statute, a petition for such a removal could not even be considered.

Under these provisos, there are county seats in New Mexico which never could be removed, notably the county seats of San Miguel and Bernalillo counties.

An inhibition of the congress of the United States is certainly as obligatory upon a New Mexico legislature as are the valid enactments of that potent body upon the individuals within the jurisdiction of the territory, and where a measure, as does this statute, bears upon its face the evidence of having been drawn in general terms for the pur-

pose of overreaching the act of congress, while confined to local districts by reason of the arbitrary provisos, it is as much the duty of the courts to interpose to prevent the consummation of the fraud upon congress, and the wrong upon individuals and communities, as though the act was in every possible respect local in its character and enacted in obvious disregard of the act of congress. In other words the courts should forbid the prostitution of an act of congress to the designs of selfishness under any pretext whatever. If the object sought to be accomplished is of real public importance; if the principles sought to be put in practice are such as promise to promote the welfare of the territory, they are such that they may be brought about by a general law, or they may be postponed until the public necessity shall require a change in the act of congress; but so long as that act is the guide by which the affairs of this territory are to be conducted, it is unwise to permit the plain terms of the act to be disregarded by any cunning jugglery of words.

Whether any particular local improvement is made or not, is of only the most incidental importance, compared with the preservation of that which amounts to a constitution, so far as New Mexico is concerned, as well as also the continued confidence of the people in the integrity, wisdom, impartiality and good faith of the judiciary.

The judiciary, as a co-ordinate branch of the government, while owing respect to the legislative department, is bound to see to it that that body does not transcend the limitations fixed by the higher legislative will of the congress of the United States, and this duty equally requires that the enactment shall be free from fraud upon the sovereign power.

An aroused public conscience is always useful in giving vigor and efficiency to the administration of the law, and we owe it to the people that we discountenance all efforts at over-riding an act of congress, either for the purpose of promoting our own private ends, or the supposed needs of

our communities. On all occasions the legislature should be kept within the limits imposed by congress and the courts should stand guard at the boundary line and forbid any encroachment upon the rights of the people as defined and declared in the acts of that body which controls the powers of a territorial legislature.

The principle of construction herein contended for is supported by the following authority:

State vs. New Brunswick, 42 *N. J. L.*, 51.

Van Giesen vs. Bloomfield, 18 *Vroom*, 442.

Water Company vs. Consumers' W. Co., 44 *N. J. Eq.*, 427.

Gibbs vs. Morgan, 39 *N. J. Eq.*, 126.

Harwood vs. Wentworth, 162 *U. S.*, 547.

State vs. Trenton, 42 *N. J. L.*, 486.

23 *A. E. Ency. Law, p.* 149. *Cases cited under Note* 1, *p.* 150.

Chapter 33 of the Laws of 1897 is unconstitutional, being contrary to the provisions of the "Springer Act," prohibiting the passage of special laws regulating county and township affairs.

Section 1 of Chapter 33 of the Laws of 1897, provides:

"Hereafter, when the county seat of any county in this territory shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a court house and jail, as well as for city purposes, such council may issue bonds of such city for the purpose of such construction and the purchase of suitable grounds for such buildings not to exceed in amount 3 per cent. upon the total value of all the taxable property within the limits of such city, as shown by the last preceding general assessment for the purpose of taxation: *Provided*, The total indebtedness of such city, including such bonds shall not exceed 4 per centum of the total value of all taxable property

within the limits of such city according to such last preceding general assessment.

* * * * * *

It is contended that this section is special legislation. We are asked to justify it on the ground of classification. The classification is but a mere pretext for which no warrant can be found in the decisions of any court. The courts can not license such indiscriminate classification as a mere subterfuge for the enactment of local laws.

The court will take judicial notice of conditions as they existed at the time of the passage of the act in question, as well as the conditions today. At the time of the enactment of this law, the City of Raton was the only incorporated city to which a county seat could be removed under the provisions of Chapter 6 of the laws of the same session. By its very terms the section can apply only to counties whose county seats shall be *hereafter* established at an incorporated city. By the designation of a time subsequent to the passage of the act, the cities of Santa Fe, Socorro and Silver City, being already incorporated cities and county seats, are forever excluded from the operation of the law.

As was said in *Com. vs. Patton*, 88 *Penna. St., p.* 258—

> "It is no part of our business to discuss the wisdom of this legislation. However vicious in principle we might regard it, our plain duty is to enforce it, provided it is not in conflict with the fundamental law. It requires but a glance at the act to see that it is an attempt to evade the constitution. I is special legislation under the attempted guise of a general law. Of all forms of special legislation this is the most vicious. * * * The act was doubtless regarded by its framers as a classification of counties, but it is not so, nor does any good reason occur to my mind why there should be such classification. If there be such reasons, amounting to a necessity therefor, we shall probably hear of them in due season. In the meantime, classification which is grounded in no necessity and has for its sole object an evasion of the constitution, will not be encouraged."

In *Morrison vs. Bachert*, 112 *Pa. St.*, 322, 5 *At l. Rep.* 739, with reference to the constitutional inhibition against

special legislation regulating the affairs of counties, cities, etc., it was declared:—

> "It was a wise provision and will be sternly enforced. It is our purpose to adhere rigidly to that instrument that the people may not be deprived of its benefits. It ought to be unnecessary for this court to make this judicial declaration, but it is proper to do so, in view of the amount of legislation which is periodically placed upon the statute book in entire disregard of the fundamental law. Much of this legislation may remain unchallenged for years, only to be overturned when it reaches this court. In the meantime parties may have acted upon it, rights may have grown up and the inconveniences and losses entailed thereby may not be inconsiderable. As we view it, this note of warning at this time is needed."

In support of the doctrine announced in *Morrison vs. Bachert, supra*, the following cases are cited:

Davis vs. Clark, 106 *Pa. St.* 377.

McCarthy vs. Commissioners, 2 *Atl. Rep.*, 423.

School District Appeal, 6 *Atl. Rep.*, 158.

Scranton vs. Silkman, 113 *Pa. St.*, 191.

Strine vs. Foltz, 113 *Pa. St.*, 6 *Atl.*, 206.

Philadelphia vs. Church, 8 *Atl. Rep.*, 241.

Weinman vs. Railroad Co., 12 *Atl. Rep.*, 288.

In *Weinman vs. Railway Company, supra*, it was held that an act providing for the incorporation and regulation of street railway companies, in cities of the second and third classes, was both special and local legislation, and therefore unconstitutional: special, because it relates to only a few of the general class known as street railway companies, and, local, in that its operations are confined to specified localities.

Under Chapter 33 of the acts of 1897, the law can only apply at present to the City of Raton, and never can apply to the Cities of Santa Fe, Socorro and Silver City. The act not being applicable to all incorporated cities which are county seats, viz: the class to which the act relates, is local

and special; is grounded in no necessity, and has for its sole object an evasion of the act of Congress. The purpose of the act of Congress was not to limit legislation, but merely to prohibit the doing, by special and local laws, that which could be accomplished by general laws. It relates not to the substance, but to the method of legislation, and imperatively demands the enactment of general, instead of local and special laws, whenever the former are at all practicable.

Scowden's Appeal, 96 *Pa St.* 422.

It may, perhaps, be suggested that such provisions of this act as are not in harmony with the Springer act may be eliminated without destroying other provisions thereof, but that is no answer to the crowning vice of unnecessary and excessive classification which stands out in bold relief on the face of both Chapters 6 and 33 of the acts of the Thirty-second Legislative Assembly. There may be many private reasons why the City of Raton should be the county seat of Colfax county, and be authorized to issue bonds to pay for a court house and jail, but there is no reason for upholding a law, clearly unconstitutional, merely that private ends may be subserved, to the loss of other taxpayers, equally as deserving, but less fortunate in the possession of this world's goods.

It may be stated by counsel for the defendants in error that this statute is not a regulation of county affairs. That it is such is too plain for argument. Furthermore, the "Springer Act" provides that the territorial legislature shall pass no local or special laws where a general law can be made applicable.

On the whole subject of necessity for classification, which is always the excuse offered by persons seeking to sustain such a law, the language used in *Agar's Appeal, supra,* is peculiarly applicable in the case at bar. In that case, the court said:

"It has also been suggested that the question of neces-

sity for classification and the extent thereof, as well as of what are local or special laws, is a legislative and not a judicial question. The answer to that is obvious. The people in their wisdom have seen fit not only to prescribe the form of enacting laws, but also, as to certain subjects, the method of legislation, by ordaining that no local or special law relating to those subjects shall be passed. Whether, in any given case, the legislature has transcended its power and passed a law in conflict with that limitation is essentially a question of law, and must necessarily be decided by the courts. To warrant a conclusion that the people, in ordaining such limitations, intended to invest their lawmakers with judicial power, and thus make them final arbiters of the validity of their own acts, would require the clearest and most emphatic language to that effect. No such intention is expressed in the constitution, and none can be inferred from any of its provisions. That those limitations were designed to establish a fixed and permanent rule cannot be doubted; but if the ultimate application of that rule were to rest solely on the judgment of the body on which it was intended to operate, nothing could be more flexible. As was well said in *Pell vs. Newark*, 40 *N. J. L.* 71, 80, 'No standard could be established by which the lawmaker could be guided, and what might be rejected at one session as improper might become a law at the next, and thus the rule would fluctuate with the everchanging membership of that body. The validity of an act would depend, not so much upon the fixed rule of the constitution, as upon the liberality or strictness with which successive legislatures, under the pressure of local influences, might determine to interpret the restraint upon their own action. That the legislature would act in good faith must be presumed. Purity of motive, and a desire to keep within the prescribed limitations must be conceded to its members at all times; but that the people should have deliberately framed and imbedded in their organic law a provision to prohibit special legislation where general laws might be passed, and, at the same time, should have intended to put legislative action beyond review, where there was a clear infraction of the prohibition, is a proposition to which it seems impossible to assent.' No such proposition can be entertained by the courts without abandoning one of the most important branches of jurisdiction committed to them by the fundamental law, viz: the power to ultimately determine whether or not a given law

is local or special, and has been passed in disregard of the constitutional limitation that has been placed upon the power of the legislature."

State vs. Pugh, I. N. E. Rep., and cases cited, p. 439.

All acts or parts of acts attempting to create a classification of counties or cities by a voting population, which are confined in their operation to the existing state of facts at the time of their passage, or to any fixed date prior thereto, or which by any device or subterfuge exclude the other counties or cities from ever coming within their provisions, or based upon any classification which in relation to the subject embraced in the act, is purely illusory, or founded upon unreasonable, odious or absurd distinctions, have always been held unconstitutional and void.

State vs. Donovan (*Nev.*), 15 *Pac. Rep.*, 783.

It is the contention of plaintiffs in error that the writ of mandamus should not have been ordered by the court. That both Chapters 6 and 33 of the Laws of 1897 are and should have been held to be unconstitutional in that they are special and local in their operation and effect, and do not constitute a proper classification under the great weight of authority.

Respectfully submitted,

R. E. TWITCHELL,
Attorney for Plaintiffs in Error.